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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

R.M.S. TITANIC, INC.,
SUCCESSOR IN INTEREST TO
TITANIC VENTURES, LIMITED
PARTNERSHIP,
Plaintiff,
v.
THE WRECKED AND ABANDONED
VESSEL, ETC.,
Defendant.

CIVIL ACTION NO.
2:93cv902

TRANSCRIPT OF PROCEEDINGS
Norfolk, Virginia
June 28, 2017

BEFORE: THE HONORABLE REBECCA BEACH SMITH
Chief United States District Judge

APPEARANCES:
KALEO LEGAL
By: Brian A. Wainger
And
McGUIRE WOODS LLP
By: Robert W. McFarland
Counsel for R.M.S. Titanic

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APPEARANCES CONTINUED:

UNITED STATES ATTORNEY'S OFFICE

By: Kent Porter
Assistant United States Attorney
Counsel for Amicus United States

THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

By: Jackie Roller
Counsel for NOAA

1 (Hearing commenced at 2:00 p.m.)

2 THE CLERK: In case 2:93cv902, RMS Titanic, Inc.,
3 et cetera, plaintiff, versus The Wrecked and Abandoned
4 Vessel, et cetera, defendant.

5 Mr. McFarland, Mr. Wainger, is the plaintiff ready
6 to proceed?

7 MR. McFARLAND: Good afternoon. Yes, Your Honor,
8 the plaintiff is ready to proceed.

9 THE COURT: Good afternoon, gentlemen.

10 THE CLERK: Mr. Porter, is Amicus United States of
11 America ready to proceed?

12 MR. PORTER: We are. Thank you.

13 THE COURT: Counsel, I believe we are here this
14 afternoon on a status hearing to review some matters in
15 R.M.S.T.'s recent periodic reports, and I see four general
16 issues before the Court to be addressed. The first is
17 related to R.M.S.T.'s report dated January 3, 2017, in which
18 it was stated that R.M.S.T. would welcome an opportunity to
19 appear before the Court to discuss NOAA's alleged disregard
20 of a non-disclosure agreement between R.M.S.T. and the
21 United States Department of Commerce regarding potential
22 sale of artifacts from the French Titanic artifact
23 collection.

24 I'm just reviewing these basically in the
25 chronological order in which they have come before the

1 Court. If it will facilitate argument, then you can reverse
2 some of the arguments. Just don't overblend the arguments
3 so that you confuse the points in lawyerly ways.

4 The second is related to R.M.S.T.'s report dated
5 May 23, 2017, in which, again, R.M.S.T. requested an
6 evidentiary hearing because of continued concerns that NOAA
7 had concealed its efforts to include in the Department of
8 Commerce Appropriations Act a provision relating to the
9 Titanic wreck.

10 Third, in that same report, R.M.S.T. made reference
11 to documents that it believes would support a complete sale
12 transaction, and there was a copy in that document of the
13 planned support agreement but there was not a copy submitted
14 to the Court of the debtor-in-possession loan agreement, and
15 the Court wants to review that and review these documents
16 before you proceed any further in regard to them.

17 Then, finally, I would like to hear a status report
18 of the bankruptcy proceedings that are ongoing in Florida.
19 Those are the issues that I have enumerated for this
20 afternoon. If there are others, you can let me know at this
21 time.

22 Are you aware of any others, Mr. McFarland?

23 MR. McFARLAND: No, Your Honor. I think that
24 covers what, from R.M.S.T.'s standpoint, we thought should
25 be before the Court.

1 THE COURT: All right. Are there any others,
2 Mr. Porter?

3 MR. PORTER: I'm not aware of other issues, Your
4 Honor.

5 THE COURT: Then, Mr. McFarland or Mr. Wainger, you
6 can proceed with your allegations in the January 3rd report
7 about NOAA disregarding the non-disclosure agreement, as
8 well as follow that up with your concern about the latest
9 provision in a law that was passed or the provisions that
10 basically you thought were writing out the Court.

11 MR. MCFARLAND: Potentially, Your Honor, that's
12 correct. May it please the Court, Robert McFarland on
13 behalf of plaintiff R.M.S.T. With me at counsel table is
14 Brian Wainger, who the Court knows, and then Ms. Jessica
15 Sanders, who is the corporate secretary for Premier
16 Exhibitions and has attended hearings in the past, Your
17 Honor, in this matter.

18 Your Honor, with respect to our concerns that we
19 expressed in the January periodic report, and then raised
20 separate concerning the May periodic report, perhaps a
21 little history is pertinent here.

22 In our February 23rd, 2016, report, we advised the
23 Court of discussions that we were having and had had with
24 NOAA about the company's financial status and about certain
25 undertakings that we might be pursuing and advised the Court

1 of our discussions with NOAA and advised the Court that we
2 had entered into a non-disclosure agreement with NOAA dated
3 January 7th, 2016. Although it was attached to our periodic
4 report, Your Honor, if the Court would like, for the
5 evidentiary record, I have the same exhibits that I can
6 offer into evidence as part of the record.

7 THE COURT: I have it here, but the file is rather
8 large, so to facilitate the proceedings, it would probably
9 be better if you passed up the relevant documents.

10 MR. McFARLAND: Thank you, Your Honor. If I could,
11 I have marked them and put them together as a group. Here
12 is one for the Court and one for your clerk.

13 THE COURT: All right.

14 MR. McFARLAND: Exhibit A, Your Honor, which we
15 would offer into evidence, is the non-disclosure agreement
16 dated January 7th of 2016 between Premier Exhibitions, Inc.,
17 and the U.S. Department of Commerce. As I say, that
18 non-disclosure followed extensive discussions between the
19 parties and the agreement that my client was going to be
20 sharing confidential proprietary information about its plans
21 with the Government and that we would expect that that would
22 be kept confidential.

23 Discussions continued, and part of what we advised
24 at the time, NOAA and the government, was that we were
25 looking to enter possibly for a sale of part of the French

1 collection of artifacts, wholly distinct from -- this Court
2 has been aware there were past efforts for sale for the
3 entire collection, which did not bear fruit, but that this
4 would be a distinct possibility of a sale of certain items
5 in the French collection. That was not public knowledge.

6 In the Government's opposition they seem to be
7 taking the position that, well, the sale of the artifacts
8 collection was public knowledge and was known as far back as
9 2012 through 2014. That was different. That isn't the
10 issue here. The specific sale of certain items in the
11 French collection was proprietary, confidential information,
12 and we only shared it with NOAA and the government pursuant
13 to this non-disclosure agreement that they would agree to
14 keep it confidential.

15 So we advised them of that and advised them of what
16 our financial status was at the time, and, of course, all
17 this predates the filing of the bankruptcy in June 2016, and
18 expected that that information would remain confidential.

19 Let me say first, Your Honor, or go back, our issue
20 is not with the folks who are in the courtroom today,
21 counsel for the Government and Mr. Albert, I think is here
22 on behalf of the museum. That's not where the problem is.
23 The problem arose, that we later learned, that in March of
24 2016, approximately two months after we've entered into this
25 non-disclosure agreement, folks at NOAA decide that they

1 want to let officials in the French Government know about
2 our plan to potentially -- and it wasn't a finalized plan,
3 obviously, at that point. It was something we were
4 considering and reviewing. They let the different French
5 Government officials know of that in direct violation of the
6 non-disclosure agreement. That, Your Honor, is found at
7 what we have offered to the Court previously and what we
8 will show here as Exhibits B and C.

9 This is very disconcerting, Your Honor, because not
10 only had we entered into the non-disclosure agreement that
11 specifically covered the possible sale of the French
12 artifacts, but in discussions with representatives at NOAA,
13 they essentially asked or stated that they wanted to
14 disclose this, and we said no, it's covered by the NDA. It
15 should not be public at this point in time, and, yet, they
16 went ahead and, in fact, we now know that as early as March
17 26, they violated the NDA and provided this information to
18 people in the French Government.

19 We then continue, and there is an e-mail, March
20 28th, in which information is exchanged with Mr. Michel -- I
21 believe is how you pronounce his name -- in the French
22 Government. We continue. The bankruptcy was filed on or
23 about June 16th of 2016, Chapter 11 proceeding, in
24 Jacksonville. Before that there were still discussions
25 about whether this information about the possible sale of

1 the French artifacts could be disclosed to the French
2 Government, and we indicated that we would let the French
3 Government officials know at the appropriate time but now
4 was not the time. There were conference calls and meetings,
5 and as of, I believe June 2nd, we made known that we did not
6 want this information disclosed at the present time. Of
7 course, it was, and what was not told to us at that time was
8 not simply that they wanted to disclose it, and in the
9 conference call Mr. Varmer of NOAA, who I think is now
10 retired but at the time was one of the senior counsel and
11 has appeared before this Court in these proceedings, let our
12 client know that he felt it was his duty to disclose
13 regardless of the NDA.

14 THE COURT: This is Mr. Varmer?

15 MR. McFARLAND: Ole Varmer. What he didn't advise
16 us at that point in time was that, in fact, he'd already
17 violated the NDA and disclosed this as early as March 26 or
18 March 28th of 2016.

19 THE COURT: Where is that? I do notice there is a
20 CC to him on the March 28 e-mail.

21 MR. McFARLAND: Right.

22 THE COURT: As an aside, you mentioned that these
23 individuals here today had not violated, but they are the
24 attorneys for NOAA, so, consequently, they are responsible
25 for their client's conduct. An attorney may not be the one

1 who actually violates, but an attorney and a representative
2 of the agency, when they're here, they are the ones held
3 responsible by the Court.

4 Oftentimes the actual sender of the e-mail, the
5 perpetrator of the chain, may not be in front of the Court,
6 but the attorneys are responsible for what their client
7 does, the same as you are responsible for what your client
8 does when you are in front of the Court.

9 MR. McFARLAND: Yes, Your Honor. But I did want to
10 say that Mr. Porter and Ms. Roller, our dealings with them
11 have been essentially without incident, other than we have
12 different positions at times, and I did want to make that
13 distinction.

14 THE COURT: I realize they, themselves, did not
15 violate, but they're going to have to defend any potential
16 violations, if appropriate.

17 MR. McFARLAND: Right.

18 THE COURT: Again, going back to my question, I see
19 Mr. Varmer copied but I don't see where he actually
20 initiated. It could be later in the e-mails.

21 MR. McFARLAND: Your Honor, if I may, there is
22 Catherine Marzin further back in e-mail, and, of course, you
23 go back to front.

24 THE COURT: Who is Catherine Marzin?

25 MR. McFARLAND: My understanding, she is an

1 attorney with NOAA. The e-mail address there is
2 CatherineMarzin@NOAA.gov. Then if you go even a little
3 farther back, Your Honor, and to help the Court, I was just
4 citing from Page 2 of 5 in this e-mail chain of March 29th,
5 2010, and going back to 28. If you go back to Page 3 of 5,
6 the top of that page is an e-mail from Mr. Varmer writing
7 to, I think the Jim there is Jim Delgado.

8 THE COURT: All right.

9 MR. McFARLAND: So we have, first, Your Honor, a
10 disturbing series of events in which NOAA feels it is not
11 bound by the covenants and provisions of the non-disclosure
12 agreement that it agreed to on January 7th, just
13 approximately two and a half months before, and so contacts
14 officials in the French Government about a potential sale,
15 and that's very disconcerting.

16 THE COURT: Did the non-disclosure agreement, does
17 it cover the French artifacts?

18 MR. McFARLAND: The potential sale, yes, Your
19 Honor. This was not public information at the time, and if
20 we look at the first page of Exhibit A, there is, in
21 Paragraph 1, what we are agreeing to in Paragraph 2, what
22 the commerce department is agreeing to, and in Paragraph 5
23 it has the exclusions, if it was in commerce's possession
24 before receipt or it becomes a matter of public knowledge.
25 Well, it was not public knowledge about the sale of the

1 French collection. That was something specifically we
2 hadn't even reached final decision on in January of 2016 and
3 certainly was not public knowledge.

4 Commerce didn't pertain that knowledge that we were
5 thinking about a sale of part of the French collection from
6 a third party. That's in 5-C on this page, et cetera. So
7 this was definitely covered by the NDA. They knew it was
8 covered by the NDA. It's why we wanted an NDA, and,
9 unfortunately, it was violated. But it doesn't stop there,
10 Your Honor. In, I believe the same time frame, March of
11 2016, Mr. Varmer reaches out to one of our most senior
12 employees.

13 THE COURT: Let's go back to the NDA. There is no
14 specific mention of the French artifact.

15 MR. McFARLAND: No, Your Honor.

16 THE COURT: I want the record to be clear, there is
17 no specific mention of the French artifacts in the
18 non-disclosure agreement. It was a generalized agreement
19 between Premier and the Department of Commerce.

20 MR. McFARLAND: But let me say there is no question
21 that the Government knew that we considered the sale of the
22 French artifacts to be covered by the NDA because in later
23 discussions, when they asked if they could broach this topic
24 with French Government officials, we said no, not yet, it's
25 still part of the NDA, it should not be public knowledge.

1 In fact, Your Honor, if I may, we have minutes of
2 telephone conferences that were held on this subject shortly
3 before the bankruptcy was filed. Let me hand up -- I think
4 we run through, Your Honor, the last exhibit in what we
5 presented to the Court is H. So if the Court pleases, I
6 would mark these as I and J, I believe they would be. Let
7 me hand a copy to counsel.

8 THE COURT: Mr. McFarland, I am marking as
9 Plaintiff's Exhibit I the call notes that have the last line
10 in blue with a strike-through on it.

11 MR. McFARLAND: Right. Then we would ask that the
12 one that does not have that blue strike-through would be J.

13 THE COURT: All right. They are so marked.

14 (The documents were received in evidence as
15 Plaintiff's Exhibits I & J.)

16 THE COURT: Jackie is referring to Ms. Rolleri
17 here?

18 MR. McFARLAND: Yes, Your Honor. These are the
19 minutes of a conference call on June 1st, 2016, and it was
20 brought by the Government that they wanted to memorialize
21 the call by keeping minutes, to which we agreed, and there
22 were draft minutes sent out.

23 So in Exhibit I we see Mr. Wainger made certain
24 revisions. And in the final version in J certain of his
25 revisions were accepted and certain ones were not. And it

1 was agreed that the final version would not contain the very
2 last phrase that Mr. Wainger had inserted in I at the very
3 end of Page 1, which is referencing Mr. Varmer announcing in
4 this conference call that he would rather -- actually, let
5 me state the exact wording, "That he would prefer to violate
6 the NDA rather than to perceive legal duty to France." That
7 was his comments in this telephone call.

8 So Mr. Wainger thought it was important enough that
9 it ought to be included in the final version of the minutes.
10 The Government disagreed. But it was acknowledged that this
11 statement was said, and so that's why it's reflected in
12 these draft minutes and preserved.

13 Sure enough, it wasn't that just Mr. Varmer would
14 prefer to violate, the reality is that on June 1st, 2016,
15 there had already been violations of the NDA through
16 disclosure to the French Government officials, as we see in
17 Exhibits B and C. But that's not the only disturbing thing
18 that occurred during this time frame, Your Honor. P.H.
19 Nargellet is a longstanding employee of R.M.S.T. In fact,
20 he testified before the Court in the salvage hearing, I do
21 believe.

22 THE COURT: One cannot forget Mr. Nargellet.

23 MR. McFARLAND: Yes. Mr. Varmer, although he is,
24 himself, an attorney, and certainly should be, and is
25 presumed to be aware of the ethical rules, directly

1 contacted Mr. Nargellet, without first seeking approval or
2 even advising Mr. Wainger, myself or any other counsel for
3 R.M.S.T., and contacted Mr. Nargellet and asked him to not
4 only provide the 1987 charter agreement but discuss its
5 implications with Mr. Nargellet and his understanding of it.

6 That's simply inappropriate, Your Honor. That
7 communication should have initially come to us, and we could
8 have reviewed it and either accepted it or asked that we be
9 on the call or we could have denied it. But what isn't
10 appropriate is for Mr. Varmer to reach out to our employee,
11 obtain information that could potentially be used in a
12 proceeding or be used to our detriment.

13 THE COURT: Let me ask you this, and I'm not doing
14 this as any conclusion, but what so far you have presented
15 to the Court is you feel that NOAA has violated their
16 non-disclosure agreement with you in regard to the French
17 artifacts; is that correct?

18 MR. McFARLAND: Correct.

19 THE COURT: But the French artifacts aren't under
20 the jurisdiction of this Court?

21 MR. McFARLAND: Correct.

22 THE COURT: So they haven't violated any agreement
23 of the non-disclosure agreement in regard to artifacts that
24 are under the jurisdiction of this Court. Is your argument
25 here more appropriate with the bankruptcy court that is

1 looking to the sale of these artifacts than with this Court?

2 MR. McFARLAND: Not in the context that we are
3 here, Your Honor. NOAA is before this Court as the
4 overseer.

5 THE COURT: Yes.

6 MR. McFARLAND: This Court controls that. What we
7 are saying to this Court is, in light of these actions and
8 activities, which seem to show a complete disregard for
9 signed agreements and basic ethical responsibilities and
10 duties about not contacting an adversary's employees, we
11 think this Court -- it is time for this Court to review,
12 and, we think, to change NOAA's status as the overseer.

13 Let me say this, Your Honor. Part of the overseer
14 role is that we trust each other and we collaborate
15 together. So let's step back and look at what happened
16 here. In a full spirit of collaboration, as my client has
17 always exhibited, we go to NOAA and say, we want you to
18 know, first off, we were not in the strongest of financial
19 conditions at the time. That was not public knowledge other
20 than what you could read in the SEC filings. We gave them
21 more information.

22 What we further did is to say, by the way, in order
23 to try and deal with our financial situation, we are
24 considering a sale, not of the public sale we have talked
25 about before, but we are considering a limited sale of

1 certain of the French artifacts. That is confidential, that
2 is proprietary, to the extent that we are going to require
3 you to enter into an NDA, and they breach it. And
4 unbeknownst to us until later on, they then contact our
5 employee without our permission, without even advising us,
6 and they show a blatant disregard. I mean, you can see
7 Mr. Varmer's statement, and were he to be here today, I
8 don't think he would deny it.

9 THE COURT: Your employee being?

10 MR. McFARLAND: P.H. Nargellet. They contact him
11 and obtain information from him that could potentially be
12 used against the company or could jeopardize this potential
13 sale of the French artifacts. I think this Court needs to
14 step back and look and say, wait a minute, do we have the
15 right overseer?

16 First off, is an overseer needed at this point in
17 time, particularly given the bankruptcy court and our
18 working with this Court? But is this the right overseer,
19 people who don't seem to have the general respect for legal
20 agreements and ethical responsibilities?

21 Remember, this is a relationship, in large part,
22 depends on trust and collaboration. We have been given the
23 trust, and we have been collaborating. Again, that's why I
24 wanted to distinguish Ms. Roller and Mr. Porter. But
25 others on NOAA seem to be willing to take our information

1 and then do whatever they think is necessary in their mind,
2 regardless of legal obligations and regardless of signed
3 contracts. That's disturbing. But it continues into this
4 year, and that's the Appropriations Act, Your Honor.

5 THE COURT: Well, the Appropriations Act is
6 certainly of more concern to the Court than your former
7 argument.

8 MR. McFARLAND: Yes, ma'am.

9 THE COURT: Because you're not happy with something
10 that NOAA has done in regard to the French artifacts, those
11 artifacts are not under this Court's jurisdiction. I
12 understand that you're upset that they contacted one of your
13 employees. I understand that you're upset that they may
14 have given a heads-up on your plans to sell the French
15 artifacts, and I've known about that plan because it's
16 before the bankruptcy court there, and this Court has made
17 it clear that anything past those French artifacts better
18 not occur without running something by this Court.

19 But in point of fact, you're really asking this
20 Court to interfere or to get into a contract dispute that
21 you have over NOAA's actions in regard to the French
22 artifacts, and I don't have jurisdiction over the French
23 artifacts. I do have *in rem* jurisdiction over the Titanic
24 wreck site, and I do have jurisdiction over the salvaged
25 items under the agreements that are in place, that salvage,

1 not including the French artifacts.

2 MR. McFARLAND: Right, Your Honor. We understand
3 that. What I'm asking this Court is, I would ask this Court
4 to review, this Court does have the authority, it controls
5 who should be the overseer here and should NOAA continue to
6 occupy this role when given these actions that have
7 occurred.

8 THE COURT: You mean the role in regard to the
9 artifacts before this Court?

10 MR. McFARLAND: Yes.

11 THE COURT: You want NOAA out?

12 MR. McFARLAND: Exactly.

13 THE COURT: Who do you want in?

14 MR. McFARLAND: I would say to the Court I don't
15 know that at this point in time. Given our long history
16 together and the reportings that have been done and where we
17 are, I don't know that there needs to be any overseer at
18 this point in time.

19 THE COURT: Mr. McFarland, I would strongly
20 disagree with you because the reason that NOAA is here is
21 because of all the machinations and happenings through the
22 years with the Court, in and of itself, Judge Clark and then
23 me, having to constantly be in a combative relationship with
24 R.M.S.T. over these artifacts.

25 The Court invoked the treaties and the protections

1 of the United States and the United States Attorney so that
2 it would not just be R.M.S.T. presenting to the Court and
3 saying we are doing this, we are doing that, and the Court
4 constantly having to rein in R.M.S.T. So what you really
5 want is NOAA out so that you could be on your own again.
6 I'm just taking it down to what I view as the bottom line.
7 You want NOAA out so you can run with your plans, and you're
8 using these French artifacts, in my mind, as an excuse. You
9 may have a point on the French artifacts, and you may have a
10 disagreement with NOAA. I'm not reaching that, but that, as
11 far as I'm concerned, is not for this Court to determine.
12 If they have breached some agreement over the French
13 artifacts and the non-disclosure, that's for you to take up
14 before the bankruptcy court that is involved in those sales.

15 NOAA has done, to my knowledge, nothing so far that
16 breaches any obligation to this Court except, perhaps, this
17 Appropriations Act, and I haven't heard the rationale for
18 it. You're basically wasting your time if you're going to
19 try to get this Court to remove NOAA because of a breach of
20 a non-disclosure agreement over the French artifacts. I'm
21 just trying to save you some time.

22 MR. McFARLAND: Well, I appreciate that. Let me
23 suggest this, and I certainly don't want to waste the
24 Court's time, but I would suggest that it is perhaps -- we
25 would say that it would be time to look at a different

1 overseer than NOAA.

2 THE COURT: Well, you're going to have to have some
3 proposals. I am not going to let, to use a colloquialism,
4 the fox guard the hen house. That is basically what occurs
5 when R.M.S.T. is guarding the artifacts. I, frankly, with
6 the Court's experience, would not be very confident with
7 that arrangement. So if you want to propose some substitute
8 entities, you can do that, but I would be loath to do a
9 private entity.

10 MR. McFARLAND: All right, Your Honor.

11 THE COURT: Because those entities, through my
12 experience and all the reports, you've changed boards of
13 directors, you've changed stockholders, you've changed
14 corporate headquarters. You move around like a shell game.

15 So, consequently, I don't know who else would be an
16 appropriate entity than the United States, who is involved
17 in a treaty with a number of other countries, and NOAA is
18 the organization that the United States has put in charge of
19 that treaty.

20 MR. McFARLAND: I understand that, Your Honor. But
21 NOAA seems to have its own agenda here and an unwillingness
22 to abide by -- and I understand what the Court is saying in
23 terms of its jurisdiction as to the NDA, but this Court
24 obviously has an interest in this and in making sure that,
25 first, there is a relationship that is mutual and that is

1 productive for all the parties.

2 I think that trust is gone now on our side, that
3 when we have shared confidential and proprietary information
4 only to see it be disclosed to the party that we
5 specifically did not want it disclosed to, that affects our
6 trust and our willingness. That goes to, and let me say, on
7 the Appropriations Act, and I'm going to jump just a little
8 bit ahead.

9 THE COURT: You don't have a choice in trust and
10 willingness if this Court says that's the representative.
11 If you don't have trust and willingness, you may not have a
12 choice. A lot of times entities have to work together, and
13 there may not be the highest level of trust, but if the law
14 requires you to do that, you have to do it.

15 MR. McFARLAND: We understand, Your Honor. Let me
16 say, I mean, since I have been involved in this action for,
17 give or take, less a decade plus, we have really tried to
18 work with NOAA and the Government, and, more importantly, to
19 be transparent with the Court and to work with the Court and
20 advise the Court of what is going on. I hear the Court's
21 concerns.

22 THE COURT: I agree, for the most part, you have,
23 Mr. McFarland, but there have been a number of times when
24 you've tried end runs, and we are all aware of that and all
25 aware of the history, and I'm not going to go back through

1 that. We are where we are at this point. The Court has
2 awarded the title to the artifacts with certain covenants
3 and conditions, and those are a court order, and they are in
4 effect, and the Court retains jurisdiction over those, as
5 well as any future salvage operations to the direct site of
6 the Titanic, which is where this Appropriations Act might
7 interfere in the Court's jurisdiction.

8 MR. McFARLAND: Yes, Your Honor. With the Court's
9 pleasure, I'll go into that.

10 THE COURT: All right.

11 MR. McFARLAND: We did not learn of this
12 Appropriations Act Section 113 of the commerce
13 appropriations bill, it was apparently signed by the
14 president on May 5th, 2017, until sometime after. We were
15 never contacted about this as to review a draft, asked to
16 discuss it, anything whatsoever. That concerns us deeply.

17 I wasn't today going to go into the legal aspects
18 too much of what it may or may not do, but the wording, as I
19 understand it, certainly does seem to implicate this Court's
20 jurisdiction, and it certainly does seem to implicate what
21 this Court has awarded us, as the salvor-in-possession, and
22 not only the right but the duty to protect that wreck site,
23 and at times when it's appropriate to go in on expedition,
24 this seems to directly affect that.

25 It seems, as I read it, to indicate that without

1 NOAA's or commerce approval, we couldn't do a dive to the
2 wreck site. Now, we certainly have always advised this
3 Court when we are going to the wreck site and always
4 discussed it with this Court. But I don't think that this
5 Appropriations Act is appropriate, and it certainly, and
6 this goes to the trust I said, Your Honor, in terms of our
7 concern about dealing with the current overseer, it was
8 never even raised to us.

9 In fact, the legislative history indicates that
10 this was slipped in at the last minute in the final version
11 of the bill and then just went in for congressional approval
12 and signature. This is something, knowing the history here,
13 and this Court knows not only my client's history but the
14 attempt by the Government since the passage of not only the
15 Titanic Act in 1986 but the international agreement in 1987,
16 of the efforts that NOAA has taken to try and get the U.S.
17 to be a full member of that. While Congress passed it, it
18 did not pass the implementing legislation necessary for it
19 to take effect.

20 NOAA has tried for years to get that implementing
21 legislation passed, and it is not. We have had concerns
22 with it over the years because of things like this where it
23 would affect our property rights, longstanding property
24 rights that this Court has awarded.

25 So what do they do? In an effort to bypass the

1 need for implementing legislation, they slip a rider into a
2 bill at the last minute that goes into effect without even
3 giving us a chance to look at it, comment on it, have some
4 say in it. I mean, if there is ever an interested party on
5 the other side of the fence here, and if the legislative
6 process is supposed to work, in terms of people having a
7 chance to view legislation, comment on it before it goes to
8 their representatives for approval, we ought to have had a
9 chance to look at this, and, quite frankly, the Court should
10 have been aware of this before it went through.

11 I don't mean to speak for the Court, Your Honor,
12 but I have the sense, from the comments that the Court has
13 made in this hearing, that it was not advised of this before
14 it went to the president for signature.

15 THE COURT: No. The Court was not advised and had
16 no knowledge of it until you brought it to the Court's
17 attention.

18 MR. McFARLAND: Exactly, Your Honor. I'm not
19 asking for a declaratory opinion today, obviously, but just
20 the passage of this is deeply troubling to us, deeply
21 concerning.

22 THE COURT: I certainly want to hear from NOAA as
23 to why and how this was put into a bill because it could be
24 viewed as contrary to the law of salvage, and I'm not
25 exactly sure how they can put into a bill that no one can

1 conduct any salvage after this Court's salvage jurisdiction
2 has been established all the way up through the United
3 States Supreme Court in the wreck of the Titanic. I don't
4 know how NOAA can come in. I'm not saying they can or they
5 can't at this juncture, but it's puzzling to the Court how
6 they think they can come in and direct that no person can
7 conduct any research, exploration or salvage.

8 Now, had they put in there, without the approval of
9 the United States District Court of the Eastern District of
10 Virginia and the courts of the United States, meaning the
11 appellate court and the Supreme Court, that's another thing.
12 But the law of salvage was established from basically
13 English law before this country was even founded. The law
14 of salvage is very clear, and this Court has been declared
15 the appropriate jurisdiction to approve, to supervise, to
16 maintain and to rule on salvage operations and
17 salvors-in-possession.

18 On its face, this looks like it's authorizing the
19 Secretary of Commerce to do so, and I don't know how you can
20 do that contrary to the established law of salvage. Perhaps
21 there is some explanation, and I don't know. Per the
22 provisions of the agreement you're referring to, I assume
23 that's the agreement with the other countries.

24 MR. McFARLAND: Right. 1987 international
25 agreement, my recollection is England has signed that.

1 Congress passed, or agreed to it, but, again, in order for
2 it to take effect, for the U.S. to be a signatory
3 implementing legislation, was necessary. What also concerns
4 us, I'll be straight up with the Court, is that this is an
5 end run on the implementing legislation that is required,
6 that this is an attempt to try and avoid necessary
7 implementing legislation and just say that this satisfies
8 that.

9 At the appropriate time, if that's the position the
10 Government is going to take, we will brief it. But I should
11 tell the Court that this concerned us so much that we had
12 originally set up a conference call with NOAA to say, hey,
13 what's going on here and what is your interpretation of
14 this? Because as the Court knows, if we were going to
15 conduct an expedition, a salvage operation, the window for
16 doing that is very short, the time because of the weather
17 and the conditions, and, quite frankly, to arrange
18 financing, takes a good effort to get the necessary
19 equipment. Timing is everything.

20 So we set up a call with NOAA to say, hey, would
21 you please tell us, A, why you didn't consult us in the
22 first place; and, B, what is your understanding of this? Is
23 it going to affect our ability if we want to come to this
24 Court and say, hey, we are planning on doing a salvage
25 expedition in the summer of 2018, do you think that we first

1 have to come to you?

2 A conference call was set up, and when we filed the
3 periodic report, to simply advise the Court of this
4 legislation so it will be aware of it, the conference call
5 was canceled. That's why I said a few minutes ago, Your
6 Honor, the collaboration and the trust, we are struggling.

7 THE COURT: Collaboration and trust aside, if you
8 decide to do a salvage operation, then you make the call.
9 You go do the salvage operation, and if they don't like it,
10 they can come to this Court and litigate it.

11 MR. McFARLAND: I understand, Your Honor.

12 THE COURT: That's the way to proceed. You say
13 this law is contrary to the orders of the Court, and we want
14 to conduct a salvage operation, and you go about it. If
15 they object to it, they can come and object to the Court,
16 the Court will litigate it.

17 MR. McFARLAND: Understood, Your Honor, and we
18 recognize that, but, remember, we are in a bankruptcy. We
19 are trying to conserve resources, and so if we have to, we
20 will, but the last thing we would like to avoid is having to
21 litigate over rights that this Court has already given us
22 and awarded us.

23 THE COURT: You may not have to litigate it. It's
24 one of those things, it's like most things in life and the
25 law, nobody can give you a 100 percent assurance of an

1 answer. It cannot be done. It can never be done. So what
2 you'd have to do is decide, if you wanted to do salvage
3 operations, that you wanted to conduct them, that in your
4 opinion you were still the salvor-in-possession under the
5 jurisdiction of this Court, proceed, and under the auspices
6 of this Court, and if there is an objection, as there have
7 been through many salvors and entities in the years, they
8 have to come before this Court. They have to file them, and
9 they have to object. They may or may not. If they don't,
10 they don't, and you're not litigating. If they do, we do,
11 and we litigate it. No different as it's been through the
12 years in that regard.

13 MR. McFARLAND: Well, I think, Your Honor, that
14 there is some difference in that the person who we would be
15 litigating with is the some overseer.

16 THE COURT: Then that's another matter. That's
17 another matter, but it's not ripe. It's not a case and
18 controversy yet before the Court.

19 MR. McFARLAND: No, but the passage of the act is,
20 Your Honor, and we were bringing it to the Court's
21 attention. I think it shows a pattern and course of conduct
22 by the overseer and NOAA that is of concern.

23 THE COURT: But courts do not create cases and
24 controversy. They rule on them.

25 MR. McFARLAND: Absolutely.

1 THE COURT: Courts do not reach out and say I don't
2 like that law so I'm going to declare it unconstitutional
3 and contrary to the law. There has to be a case and
4 controversy before the Court.

5 MR. McFARLAND: Understood.

6 THE COURT: I can certainly express any displeasure
7 I have with this law, but I cannot do anything about it
8 until there is a case and controversy before the Court.

9 MR. McFARLAND: Understood.

10 THE COURT: At which point I have the jurisdiction
11 to act.

12 MR. McFARLAND: We fully understand that, Your
13 Honor. But, obviously, the first, or at least a relevant
14 step was to let the Court be aware of the act.

15 THE COURT: Well, I'd like to hear from Mr. Porter
16 as to how this act came about and the provisions in regard
17 to giving the Secretary of Commerce the authority to give
18 permission for salvage operations.

19 MR. McFARLAND: Thank you, Your Honor.

20 MR. PORTER: Good afternoon, Your Honor. First
21 off, let me just back up just a second in terms of once this
22 legislation was passed, I had spoke with the NOAA
23 representatives, and we were prepared to bring this to the
24 Court's attention.

25 Then the periodic report was filed, obviously

1 teeing up the whole issue. So that was the reason that
2 we -- well, we didn't get it here as quickly as they did,
3 but that was the reason we had not yet brought it to the
4 Court's attention. However, since this has surfaced, I have
5 gone back and talked with NOAA representatives to determine
6 sort of the course of events of how this came about.

7 What I have learned is that starting in about
8 September of '16, that NOAA's budget office was contacted by
9 the House Appropriations Committee about potential
10 legislations for an appropriations bill. Following that,
11 the Senate Appropriations Committee also reached out to the
12 house -- excuse me, to NOAA's budget office, and therefore,
13 those two committees, the House and Senate, coordinated
14 through NOAA's budget office and NOAA's legislative affairs
15 office with certain questions about the international
16 agreement.

17 At some point in late September of last year, the
18 House Committee provided to NOAA some draft language to
19 review and to provide the technical drafting assistance that
20 we referenced in our response.

21 That led to a series of exchanges. The objective
22 always was to protect the wreck site and the artifacts and
23 attempt to implement international agreement, and I will
24 come back to that in just a second.

25 There was a period of back and forth with the

1 NOAA's office of general counsel working with their budget
2 and legislative affairs offices to work with the committee
3 staffs at both the House and the Senate. There was then a
4 period of lull, quite frankly, until March of 2017 when,
5 again, some language was discussed. I don't want to get too
6 far into internal NOAA deliberations on the language.

7 Suffice it to say that what NOAA may suggest or
8 propose is not necessarily what a Congressman chooses to put
9 into a bill. And I think we can look back at prior
10 legislation that was offered and see that there was always
11 attempts to protect this Court's ongoing jurisdiction and
12 the existing orders of this Court.

13 So that's how this language came about. That's how
14 this insertion came. It came from Congress first to NOAA.
15 It was not the other way around of NOAA pushing forward.
16 There are a few open questions as to this that are clear,
17 is, first off, is whether this is a provision that
18 implements the international agreement, and that is not
19 known at this time because the department of state has to
20 weigh in on that.

21 At this point I know that that information is out
22 there to them. I don't know what process is going on in
23 Department of State to determine whether this actually acts
24 as an implementation of the international agreement that was
25 done previously.

1 The other question is, as the language of the
2 legislation states, is that the implementing authority with
3 the Secretary of Commerce right now? That, too, is an open
4 question of whether that will come down to NOAA. We don't
5 know that at this point. There are questions in some
6 agencies, as the Court is probably well aware, that
7 political appointees have not been named to run the
8 agencies, and so some of those questions may be deferred
9 until that, but at this point the implementing authority for
10 this particular piece of legislation remains with the
11 secretary and not with NOAA.

12 NOAA, I think, Your Honor, should be aware. NOAA
13 has always taken the position that the Court's orders should
14 be protected, that the Court's orders should be enforced,
15 and that the Court's salvage award and the
16 salvor-in-possession status remain in effect.

17 But, again, this is admittedly somewhat of a fluid
18 situation right now with this passage, again, that initiated
19 from the hill down to NOAA and not vice versa. So the idea
20 that -- quite frankly, the idea that NOAA, in some act of
21 subterfuge, has gone and tried to implement something to
22 deliberately undercut R.M.S.T. is false.

23 THE COURT: Well, it's not clear at this juncture
24 where it stands. It may well be an effort, as everyone
25 says, to implement the 1987 international agreement, which

1 basically protects the wreck site. Protection of the wreck
2 site is one thing from people going in and out of there.
3 It's another when you start into salvage operations, because
4 the law of salvage controls. Then that's where this Court
5 has the jurisdiction over the actual salvage rights.

6 This could be viewed as a preventive legislative
7 measure that keeps anyone out of there, and except if
8 someone does go in, then it would have to come before this
9 Court to determine any salvage rights. I don't know the
10 extent. It's a very brief provision. I think that both of
11 you indicated that you all would make a separate filing
12 about the implications as you viewed them on this Court's
13 jurisdiction. I don't think you have made those filings
14 yet.

15 MR. PORTER: Well, I believe we referenced that
16 R.M.S.T. indicated they intended to file some separate
17 action and that we would respond accordingly at that time.
18 Again, as I indicate, this is somewhat fluid. I can
19 represent to the Court, based on my conversations with a lot
20 of the NOAA folks involved in this, including Mr. Varmer,
21 who has received some special attention from R.M.S.T., there
22 is an extraordinary desire and motivation to protect the
23 Titanic wreck site and to protect the artifacts and to
24 maintain the wreck site and to maintain the artifacts in the
25 public domain and for the public benefit. That is, quite

1 frankly, a motivation that overrides, perhaps sometimes with
2 some zeal that maybe shouldn't have, but overrides what NOAA
3 is doing throughout this.

4 We believe that NOAA's desires and its intent to
5 foster the public's interest in the artifacts is, quite
6 frankly, consistent with what the Court has directed. I've
7 gone back through in preparations and read a lot of the
8 Court's opinions from the past, and it is absolutely clear
9 to us that that is the Court's desire, that these artifacts,
10 this wreck site, be protected in posterity for the public.
11 That is what NOAA is attempting to do. We think NOAA is the
12 ideal and the proper person to oversee the public interest
13 and these covenants and conditions.

14 I will simply note that the Court has pointed out
15 that there has been in the past perhaps a combative, at
16 times, between the Court and R.M.S.T. Quite frankly, we
17 have tried to cooperate. I suppose it's from whose
18 perspective you look at this, but we would suggest that it
19 is not -- there has been some combative from this side of
20 the bar, as well as NOAA has attempted to enforce the public
21 interest.

22 We certainly recognize that there is not *in rem*
23 jurisdiction over the French artifacts. We certainly
24 recognize that a number of the restrictive covenants and the
25 covenants and conditions do not apply to the French

1 artifacts. At the same time, however, we recognize and we
2 believe that the *in personam* jurisdiction provisions of the
3 covenants and conditions, and the items that R.M.S.T. agreed
4 to with respect to the Titanic collections as a whole, we
5 outlined some of those in our response, and I'd be happy to
6 even address more of those.

7 Some of those provisions, quite frankly, if there
8 is a violation of those provisions as to the Titanic
9 collections, or in the material default section, or assumed
10 to be material defaults of the covenants and conditions,
11 that is an issue, and that is the tension that has existed
12 between NOAA and R.M.S.T. R.M.S.T. has taken the position,
13 is certainly their right to do so, that the CNCs impose
14 absolutely no obligations or continuing commitments as to
15 the French artifacts in the event of their sale.

16 Quite frankly, we disagree with that. Perhaps
17 today is not the day to have that debate. Perhaps the time
18 to have that debate is when R.M.S.T. brings to the Court's
19 attention a possibility of a sale of something that includes
20 the French artifacts. But that is a real, genuine debate
21 that is driving a lot of this, which is the protection of
22 the entire Titanic collection, and that is, the CNCs
23 actually made clear, NOAA's public interest relates to the
24 entire Titanic collection, and it takes that responsibility
25 quite seriously.

1 I would simply note one last point is that NOAA
2 really has sort of two tracks in this. NOAA has its
3 obligations from the Court and through the CNCs, but it has
4 these independent obligations that arise because of its
5 status and because of its involvement with the international
6 agreement.

7 Those two things may conflict at some times, but,
8 again, I come back to the point that at no time has NOAA
9 acted in such a way as to try to undercut this company.
10 This company has often been combative in terms of NOAA's
11 attempt to address issues with respect to the French
12 artifacts. It's a healthy discussion, it's a reasonable
13 discussion we can have.

14 THE COURT: Well, two things, Mr. Porter: Number
15 one, I task you and Ms. Roller, the NOAA attorneys, as well
16 as NOAA representative and you, with keeping the Court
17 informed as there are any developments or any enforcement
18 provisions that arise as a result of the 2017 Appropriations
19 Act and the pertinent provision, I think it's § 113.

20 MR. PORTER: I will do that, Your Honor.

21 THE COURT: You need to keep the Court apprised.
22 At this juncture, I don't see a tension between NOAA's
23 objective and the Court's objective from the standpoint of
24 preserving this wreck site for posterity. I think that that
25 has always been an important driving force of this Court

1 from my predecessors, who are now deceased, to today, that
2 this is a wreck site, it's a cemetery in the sea, it's of
3 international importance and significance, of historical
4 value, and it can't just be decimated without proper
5 controls and provisions.

6 So I think that the ultimate goals of NOAA and the
7 Court are the same. The only place I see a clash is if
8 there is some provision that NOAA is enacting that somehow
9 makes an end run around the salvage law and what has been
10 established all the way up through the Supreme Court. That
11 you're protecting the wreck site is one thing, but if there
12 are salvage operations that go forward, they need to be
13 under the auspices and direction of this Court, not in the
14 Department of Commerce.

15 Certainly, the Department of Commerce can monitor
16 it, and if a Government or some entity comes in, then as far
17 as I'm concerned, it's the Department of Commerce's
18 responsibility, with the law of this case having been
19 established, to notify this Court. I think it's a public
20 protection and legal duty.

21 It's a protection for everyone to have NOAA
22 overseeing the site, as long as the Court is made aware of
23 any attempts by any Government or any entity to disturb the
24 site or make future salvage operations, because I do view
25 this Court as having jurisdiction over the salvage

1 operations and having continued *in rem* jurisdiction over the
2 Titanic wreck site.

3 MR. PORTER: Understood, Your Honor, and as we said
4 in our response, we continue to abide by that and will
5 continue to do so going forward.

6 THE COURT: In terms of any case or controversy,
7 I'll have to await that, if there is one, if there is any
8 filing by R.M.S.T. that asserts problems with the statute or
9 any other issue in this regard. But for now I think that
10 the Court has made its point clear, and I think that you're
11 on notice that the Court is of the opinion that it retains
12 its jurisdiction over the *in rem* salvage of the wreck site.

13 MR. PORTER: Understood, Your Honor. May I bring
14 up one other point? I don't believe Mr. McFarland, you were
15 going to ask about some updates on the bankruptcy
16 proceeding.

17 THE COURT: Yes.

18 MR. PORTER: Well, if I may, I'll let Mr. Wainger
19 go, and he probably will cover everything I need to cover,
20 perhaps, unless we're combative.

21 THE COURT: What about this DIP agreement?

22 MR. WAINGER: Judge, I'll cover all of those issues
23 that Your Honor raised. It's nice to see Your Honor.
24 Before I dive into those other issues, Mr. Porter just
25 raised a point that's very, very important to the company.

1 It has been at the core of the communications between NOAA
2 and the company for well over a year. NOAA's role here
3 comes through the covenants and conditions, by what the
4 Court ordered for NOAA to have oversight.

5 Last year when we were here, almost just about a
6 year ago, the Court noted, when we told the Court that we
7 were looking to sell certain French artifacts, the Court
8 said those were carved out of the covenants and conditions
9 and this Court has no jurisdiction over the French
10 artifacts. That's certainly our understanding as well.

11 The Court again reminded us that with respect to
12 their oversight role and a potential sell of French
13 artifacts, that's not before this Court because the Court
14 has no jurisdiction.

15 But NOAA is taking an extraordinarily broad view of
16 the covenants and conditions such that because of an
17 aspirational line in the covenants that we should do, to the
18 extent possible, what we can to keep all of the collections
19 together, NOAA is somehow trying to suggest that this Court
20 can fine the company in contempt of the covenants because it
21 chooses to sell the French artifacts.

22 NOAA has made filings in the bankruptcy court to
23 disrupt the company's efforts to sell French artifacts. It
24 has engaged, in all of our conversations with the these same
25 issues, it has brought the issue to the Court both in a

1 filing made last week and today, and I think it's high time
2 that we put this issue to rest.

3 The company has the authority, based on the
4 bankruptcy court's rulings, to either go forward with a sale
5 of French artifacts or not, and I'll explain to the Court in
6 a minute where we are with that. But the covenants and
7 conditions, and this Court's jurisdiction, and NOAA's
8 oversight, do not and should not extend to any actions taken
9 by the company with respect to the French artifacts.

10 Now, I say that with the full knowledge that the
11 company intends to inform this Court of anything it does
12 with respect to the French artifacts. It would have to get
13 approval from the Jacksonville court. But the notion that
14 the covenants and conditions somehow, by virtue of their
15 extension of personal jurisdiction over the company, somehow
16 vests in this Court the authority to regulate, or for NOAA's
17 authority to regulate, what we do with the French artifacts,
18 is a leap beyond which the law will not allow, and that has
19 caused the company significant problems in the Jacksonville
20 court. And the issue rests here because NOAA is seeking to
21 bootstrap this Court's jurisdiction to somehow regulate the
22 company's actions with respect to the French artifacts.
23 It's inappropriate. It's not supported by this Court's
24 rulings last year, by this Court's remarks today, by the
25 Fourth Circuit's rulings in 2006, and I would tell the Court

1 that when the covenants were drafted by Professor Bederman,
2 with my assistance and with the Court's input and with
3 NOAA's input, we all made a very real effort to carefully
4 draft them. So to the greatest extent possible, they
5 encompass this Court's desire to keep all the collections
6 together but without impinging on the Fourth Circuit's
7 decision with respect to subject matter jurisdiction.

8 So that's a very, very important issue, and delay
9 simply doesn't work for the company on that. We need the
10 clarity. We feel very comfortable on the law, and yet,
11 because NOAA takes certain positions in the Jacksonville
12 court, it has created great obstacles for us. So that's a
13 very important issue that I wanted to bring to the Court's
14 attention and make it as clear as I can.

15 We do not view the covenants as requiring the
16 company to do anything affirmatively or to prohibit anything
17 affirmatively with respect to the French artifacts. That's
18 the point I wanted to be clear with the Court.

19 THE COURT: What are you asking this Court to do?

20 MR. WAINGER: The Court has already said it has no
21 jurisdiction today, has already said it has no jurisdiction
22 today over the French artifacts. NOAA needs to understand
23 that no jurisdiction means no jurisdiction and that they
24 should not take the position in this court, Jacksonville or
25 anywhere else, that they have the authority or that this

1 Court has the authority to decide what this company can or
2 should or might do with the French artifacts. That's an
3 issue to be decided by a French adversary proceeding inside
4 of the bankruptcy court, and that's why we are taking those
5 steps.

6 I'll update the Court on that proceeding
7 momentarily. But the idea that the Jacksonville judge
8 should think that this Court may weigh in on the French
9 artifacts is a notion that we need to end. We thought it
10 had ended last June, and reported to the Court in
11 Jacksonville what this Court had to say, and filed the
12 transcript.

13 NOAA chose to disregard the Court's comments then,
14 and as soon as we left that hearing, some of the members of
15 the NOAA team, who are not here today, showed some dismay at
16 the Court's reaction and then decided that they would
17 somehow bootstrap the *in personam* argument and the notional
18 ideas of keeping the artifacts together in the covenants to
19 somehow lock the company into the covenants with respect to
20 the French artifacts. So I think we just need the clarity
21 that that is not appropriate and that no jurisdiction is no
22 jurisdiction when it comes to that subset of artifacts.

23 THE COURT: Don't you need to file something? I
24 mean, I'm not totally privy to what's going on in the
25 bankruptcy court, but, obviously, something is going on down

1 there. Wouldn't it be appropriate to file some type of
2 motion that brings this to the Court, and if the bankruptcy
3 court or the attorneys seek a more definitive ruling from
4 this Court, then to seek it. I don't know exactly what
5 you're asking this Court to do without a specific motion
6 before the Court.

7 All I can say is I act through what my rulings and
8 orders. They are all of writing or of record. My
9 assumption is, is that you take those before the bankruptcy
10 court, and the bankruptcy court makes a determination. If
11 the bankruptcy court seeks input from this Court, that's one
12 thing. NOAA is the Government representative on this matter
13 to be sure that the covenants and conditions are properly
14 upheld and enforced and that there not be a wholesale
15 disposition of the artifacts.

16 MR. WAINGER: That's the interesting point, Judge.
17 NOAA's presence is here by virtue of the covenants. The
18 covenants themselves speak to their governance of the
19 artifact over which this Court has jurisdiction; namely, the
20 subject Titanic artifact collection. But NOAA has taken
21 certain language of the covenants to try to regulate the
22 company's use or disposition of the French artifacts. It's
23 not appropriate. In the same way that this Court said
24 earlier, with respect to possible violation of the NDA,
25 well, that involves French artifacts that aren't before me,

1 maybe you should bring that to Florida.

2 Judge, NOAA is suggesting by virtue of these
3 covenants that it can regulate the French artifacts. We are
4 in the unique situation here where we are the only party to
5 the case, but with an overseer who has its own agenda with
6 respect to the protection of the collection. It may be the
7 same as the Court's. But clearly Mr. Porter spoke of the
8 zeal and the enthusiasm with respect to protecting the
9 collection and that that zeal that may have contributed to
10 some decisions certain NOAA personnel made with respect to
11 the NDA in contacting -- it's that same zeal that allows
12 them to use these covenants as a shield to try to prevent
13 the company from doing what it should in the French
14 adversary proceeding. So we are the only party here, and it
15 seems strange. We are in Neverland.

16 THE COURT: Now you know how it feels.

17 MR. WAINGER: I understand. But to the extent that
18 the Court seeks a formal motion, we will be happy to -- I
19 know the Court doesn't seek a motion, but to the extent that
20 the Court feels that a motion is the proper vehicle.

21 THE COURT: I can't tell you how to practice law,
22 but it seems to me that what you're trying to do is get a
23 question before a Court, whether it be this Court or the
24 bankruptcy court. The question that you seek to get before
25 the Court is whether the covenants and conditions cover the

1 French artifacts and the extent to which NOAA has a role
2 under the covenants and conditions in regard to the French
3 artifacts. That's the issue that you're having. Now,
4 whether you as attorneys think you need to take that before
5 the bankruptcy court or whether you need to take that before
6 this Court or both, that's your decision.

7 At this juncture, I have no motion for declaratory
8 judgment or a motion to properly enforce. I don't know how
9 I would word it. I haven't thought it through from a legal
10 standpoint, but that's basically what you want. You want to
11 get before a Court for some declaration of the extent of
12 NOAA's involvement in the approved covenants and conditions
13 that are in effect in this case.

14 MR. WAINGER: And whether this Court, by virtue of
15 the covenants, has any jurisdiction or input over a
16 disposition of the French artifacts. Those are exactly the
17 issues. It is a positive development that we have brought
18 the issue out instead of just the conversations we have had
19 in front of the Court, and I think that's a step in the
20 right direction. To the extent that the client feels that
21 we need affirmative resolution on that, then we will make
22 the appropriate decision and file papers here, there, et
23 cetera.

24 THE COURT: All right.

25 MR. WAINGER: Thank you for allowing me to speak to

1 that issue, Judge. We had raised a number of points in
2 our periodic reports. Let me go through them. First with
3 respect to the debtor-in-possession financing, we will
4 provide the Court the appropriate agreement, the financing
5 agreement with the company and the third party presenting
6 the financing.

7 The financing is up to \$5 million. It is to be
8 used as a priority to pay the professional fees that the
9 company has incurred in the process of its bankruptcy, which
10 has now been going on for over a year, and we'll get you a
11 copy of the agreement. The important thing for the Court to
12 note is that great steps were taken to ensure that the
13 security arrangement, security agreements and the collateral
14 utilized with respect to the financing agreement, does not
15 impinge or violate the covenants and conditions of the
16 artifacts.

17 THE COURT: It's mystifying to me why you didn't
18 give it to me up front.

19 MR. WAINGER: That was an oversight.

20 THE COURT: Then please present it to the Court on
21 or before close of business this Friday.

22 MR. WAINGER: We will.

23 THE COURT: You've got it. Give it to the Court.

24 MR. WAINGER: We will. I should also note, Judge,
25 and I should have done this before, Jeff Cavender is the

1 company's lead bankruptcy attorney from Troutman Sanders.
2 He is here. He is from Atlanta, and he's not barred in
3 Virginia, but he is here should the Court have any specific
4 questions on anything relating to the bankruptcy that I
5 can't answer. He is here for that reason. We will get that
6 immediately, Judge.

7 THE COURT: Just give me a summary of the status of
8 the bankruptcy.

9 MR. WAINGER: Status of the bankruptcy. We have a
10 planned support agreement that is in place which will govern
11 a potential sale of the entire stock of R.M.S.T. and/or the
12 entire collection, both collections as a whole. So we have
13 deviated, for a variety of reasons. Last year when we were
14 here we were talking about a limited sale of the few French
15 artifacts.

16 Now we have negotiated with the various committees
17 a planned support agreement. We have copied the planned
18 support agreement and the complete sale transaction term
19 sheets to our most recent periodic report. The means of
20 implementation are as follows: The debtors, with the
21 consent of the supporting committees, shall conduct a
22 process to market and sell the common shares in R.M.S.T. or
23 the entire artifact collection held by R.M.S.T. and to the
24 operations of Premier Exhibition and its subsidiaries with a
25 continuing licensing right for existing operations, which we

1 call the complete sale.

2 So the goal here, Judge, and the company's in the
3 process of trying to move this forward, is to market and
4 sell the entire stock of R.M.S.T. and/or all of the
5 operations of Premier. The plan will provide for the
6 formation of a liquidation trust for distribution to
7 creditors and equity holders according to lawful priority.

8 One thing that I know is important to the Court, as
9 it is to the company, is that we have a number of conditions
10 on the effective date of a sale. One of the conditions is
11 entry of an order of the United States District Court for
12 the Eastern District of Virginia approving any sale of the
13 common shares of R.M.S.T. or the artifact collection of
14 R.M.S.T.

15 THE COURT: What are you reading from?

16 MR. WAINGER: This is the complete sale transaction
17 term sheet, which is an exhibit -- and I'll find out which
18 exhibit -- to our most recent periodic report. We require,
19 obviously, as a contingency, that we will be in front of
20 this Court before a subsequent trustee is designated or any
21 sale happens. That is a contingency built into the plan
22 itself.

23 You may have seen that the Government filed an
24 objection to our planned support agreement last week on a
25 variety of grounds, all related to this Court's jurisdiction

1 and approvals and treatment of the entire collections
2 together.

3 THE COURT: I'm going to tell you I pretty much
4 agree with their objections. I will put that on the record
5 for you to take to the bankruptcy court because I read them,
6 and to the extent I'm reading your PSA, I think you may be
7 trying to make end runs around this Court and the covenants
8 and conditions.

9 MR. WAINGER: That issue has been resolved, Judge,
10 because in the last couple of days since they made their
11 filing, we negotiated a settlement, and they have withdrawn
12 their objection. And the settlement is in addition to the
13 order approving the PSA, which reads as follows:
14 "Notwithstanding anything contained in this order, the
15 motion or the planned support agreement, any sale of the
16 American artifact collection is expressly conditioned on the
17 entry of an order from the Eastern District of Virginia,
18 Norfolk Division, approving such sale, consistent with the
19 covenants and conditions applicable to such artifacts, and
20 such order has not been appealed or, if appealed, no stay
21 has been entered."

22 THE COURT: You're referring to the United States
23 District Court, not the bankruptcy court?

24 MR. WAINGER: We are referring to this court, the
25 United States District Court for the Eastern District of

1 Virginia, and that's the language in the agreement between
2 the Government and the company. So it is expressly noticed
3 in the order itself that before anything happens, we will be
4 here before Your Honor. That has always been the intent,
5 and the company had no problem putting it in an order, and I
6 think it's fair that I can represent that the Government has
7 withdrawn or intends to withdraw its objections based on
8 that language.

9 THE COURT: Is that correct, Mr. Porter?

10 MR. PORTER: That is correct, Your Honor. I will
11 have a comment about that objection when Mr. Wainger is
12 done, but that is correct, yes.

13 THE COURT: All right.

14 MR. WAINGER: Judge, that is the big picture of the
15 bankruptcy right now. It's worth noting that the company is
16 making progress at this point in the bankruptcy. We are
17 thrilled to have this PSA in place. One aspect of the
18 bankruptcy, which we have alluded to, is the French
19 adversary proceeding. We have informed the Court of where
20 we stand. Essentially, Judge, back in April, the clerk in
21 Jacksonville entered default.

22 THE COURT: You talking about against the French
23 Government?

24 MR. WAINGER: Against the French Government. The
25 Court, when you're seeking default, that the Court is

1 probably aware, against a foreign state, the evidence must
2 be satisfactory to the Court in order for the judgment to be
3 entered. We presented some evidence to the Court on the
4 legal implications of the *proces verbal*. In April the Court
5 said that we had not presented sufficient evidence to its
6 satisfaction, raised a number of questions, and asked us to
7 answer those questions.

8 We had a preliminary evidentiary hearing last week
9 where we agreed to present additional expert opinion from
10 legal, French legal experts on those issues. We will
11 present that evidence via, in all likelihood, the affidavit
12 by July the 13th, and then absent any objections from any
13 parties, the Court will consider the additional evidence.
14 That is where that stands, and, obviously, we would await
15 that Court's decision.

16 That issue is determining whether or not the French
17 Government has any interest in what we have been calling the
18 French artifacts. So that is what that issue is about. So
19 resolution of that adversary proceeding certainly appears to
20 be forthcoming one way or the other. Judge, frequently when
21 we are here the Court asks for updates on officers and
22 directors of the company.

23 THE COURT: Yes.

24 MR. WAINGER: Since we were here last year, there
25 are three new directors, including the chief financial

1 officer. I submit this as Exhibit K, Your Honor, providing
2 that information. In the past I believe the Court has asked
3 for addresses and maybe phone numbers of these folks. To
4 the extent the Court wants that, we can provide that.

5 THE COURT: I do, and their citizenship.

6 MR. WAINGER: Will do.

7 THE COURT: Looks like Mr. Bains is from Canada?

8 MR. WAINGER: Yes, Your Honor.

9 THE COURT: Mr. Guo David Ding?

10 MR. WAINGER: Canada, as well.

11 THE COURT: Well, he is associated with China, U.S.
12 and Hong Kong, among other countries, but Canada?

13 MR. WAINGER: Mr. Henshall is a Canadian citizen,
14 as well, Your Honor.

15 THE COURT: The moving target of the board of
16 directors. Go ahead.

17 MR. WAINGER: Good news is that we have been here
18 the whole time.

19 THE COURT: I'll mark this as Defense Exhibit K.
20 If you would follow through with the nationalities and the
21 residence address. You file that under seal, since it's
22 personal identifiers, under the eGovernment Act.

23 MR. WAINGER: We will do, Your Honor. That is all
24 I have at this time.

25 (The documents were received in evidence as

1 Plaintiff's Exhibit K.)

2 THE COURT: All right.

3 MR. PORTER: Just a couple of points, Your Honor.
4 First, I would like to thank Mr. Wainger for suggesting I
5 have zeal. That doesn't happen very often.

6 THE COURT: Suggesting he has zeal?

7 MR. PORTER: Suggest that I might have zeal, along
8 with NOAA, and I appreciate that. With regard to the
9 objections filed in the bankruptcy court, I just feel like I
10 need to make one point. As it states at the end of those
11 objections, you'll note that there was an attempt to resolve
12 the objection before they were filed. There was a good
13 faith effort on behalf of commerce. That was not me. That
14 was a Mr. Ted Randall with the department who is handling
15 the bankruptcy proceedings in Florida. That, quite frankly,
16 went nowhere. That's why the objections had to be filed in
17 the first instance.

18 Two points about the resolution of that. First, I
19 would suggest to you it shows that NOAA and commerce are
20 more than willing to cooperate when we are trying to reach
21 interest and make sure that the artifacts are protected. I
22 would note that the resolution of that objection ensured
23 that there was language that made sure the sale came to you
24 first, because that is our objective, to make sure that this
25 Court has an opportunity to pass on any transaction that

1 disposes of the artifacts, either as a whole or the French
2 artifacts, and that's -- I would come back to the French
3 artifacts, that that has been one of our objectives. Quite
4 frankly, it's been longstanding not just with NOAA people
5 that aren't here, my predecessor, Susan Watt, wrote a letter
6 in '15 addressing this issue of the CNCs and the French
7 artifacts. I wrote one last year once I came on board to
8 address the same thing.

9 This has been an ongoing issue, and our request,
10 really, we wanted to get this before the Court before there
11 was any transaction. My understanding in talking with
12 Mr. Wainger and Mr. McFarland this morning, that the
13 statements in the periodic report and, again, their
14 statements today, that they will bring any effort to sell
15 the French artifacts also before you to give us the
16 opportunity to address whether the covenants and conditions
17 apply and whether this Court should take some action.

18 With that addition, I have nothing further, Your
19 Honor.

20 THE COURT: All right. Are you in agreement with
21 that, Mr. Wainger?

22 MR. WAINGER: Yes, Judge. Wanted to respond to
23 that and one additional point. We plan to come to this
24 Court, as we have done, with respect to any material
25 developments in the company before anything takes place, and

1 notwithstanding our position on the French artifacts, we
2 will be here. There will be no efforts to do anything but
3 be very direct with the Court. So we have no problem
4 agreeing to that. We will be here before that takes place.
5 As I told the Court, that is not the objective at this
6 point. The objective is not to sell the limited French
7 artifacts. The company should have, we believe, the
8 flexibility to do so, but should that ever occur, we would
9 be here first, and that's a representation to the Court.

10 One issue that Mr. Cavender raised that I want to
11 bring to the Court's attention. When we filed the
12 debtor-in-possession financing motion, NOAA did not object
13 to that, and that hearing is to be held tomorrow in
14 Jacksonville for approval of that financing.

15 With that in mind, you know, we intend to go
16 forward with that hearing. We also want to present the
17 financing agreement to the Court as quickly as possible, for
18 obvious reasons. So when we leave here, we will be sure
19 that a copy of that is immediately faxed to Your Honor's
20 chambers, and we don't anticipate any problems or concerns,
21 but we want the Court to have it before that hearing
22 tomorrow. Of course, Mr. McFarland and I would be available
23 at any time should the Court read that financing agreement
24 and have questions or concerns ahead of tomorrow's hearing
25 in Jacksonville.

1 THE COURT: Do not represent to the judge in
2 Jacksonville that we faxed that to Judge Smith and told her
3 if she had any objections or comments to let us know, and we
4 haven't heard from her.

5 MR. WAINGER: We will not.

6 THE COURT: Because I cannot assure you that I am
7 going to. In fact, I can probably assure you that I am not
8 going to read it between now and tomorrow given the other
9 matters on the docket and the schedule for even today and
10 tomorrow.

11 So my silence is not agreement, and my silence does
12 not mean that I had no comment.

13 MR. WAINGER: We will not make any representations
14 to the Court in Florida about this Court's position with
15 respect to DIP financing. We will simply go forward with
16 the proceedings in Florida.

17 THE COURT: Counsel, is there anything else?

18 MR. PORTER: Your Honor, the only other thing is,
19 if you would care to, there are certain visitors in the
20 courtroom are here on their own volition. I would be happy
21 to introduce them to the Court.

22 THE COURT: That would be fine.

23 MR. PORTER: First off, Dr. Bob Ballard, who I
24 believe you may recognize as the person who discovered the
25 Titanic.

1 THE COURT: Nice to see you, Dr. Ballard.

2 MR. PORTER: He is here. He has indicated that he
3 wished to make a statement to the Court, but I told him that
4 that was entirely up to the Court. We were not proffering
5 any statement.

6 THE COURT: He can make a statement if he would
7 like.

8 MR. PORTER: If may introduce the remaining
9 individuals. In the back to the far left, Maria Wilhelm.
10 She is the chief operating officer of Cameron Companies.
11 Next to her is Christina Simmons, who is an Ocean scientist.
12 And next to her is Janet Carros, who runs the foundation. I
13 would just simply say, again, these are not individuals we
14 invited here. They are here on their own volition in
15 support of the Titanic and the artifacts.

16 THE COURT: The Court welcomes their presence and
17 their support of the Titanic and everyone's work in the
18 preservation of the site and the artifacts.

19 Dr. Ballard.

20 DR. BALLARD: May I approach?

21 THE COURT: Yes, you may.

22 MR. BALLARD: As he just introduced, I'm Dr. Robert
23 Ballard, and I'm the person who discovered the Titanic in
24 1985. But I also speak not only on my behalf but on a group
25 of organizations and individuals that cannot be here today.

1 Those organizations include Titanic Belfast, which is a
2 public exhibition center on the Titanic that is located in
3 the very Harlan and Wolf Shipyard where the Titanic and her
4 two sisters were built. I also am here to speak for the
5 National Maritime Museum at Greenwich in London, which is
6 the leading maritime museum of the United Kingdom and an
7 expert on the conservation and preservation of England's
8 maritime history for the British Government.

9 Jim Cameron, as you know, a famed explorer and
10 academy award winning filmmaker who told the story of the
11 tragic loss of the Titanic to the world. Also, the National
12 Geographic Society, which participated in our discovery in
13 1985, and has long chronicled the Titanic and which produced
14 the documentary on our discovery, which was the highest
15 rated cable television program in the history at the time.
16 And the Woods Hole Oceanographic Institution, who shipped
17 and submersible, I used, defined and explored the Titanic
18 and where I am presently a senior scientist emeritus.

19 We all met, everyone I just mentioned, recently to
20 discuss steps that might be taken to protect the site, as
21 well as bring all of the artifacts back home to the United
22 Kingdom to be the primary displayer of the artifacts in
23 Belfast where they belong, where England's National Maritime
24 Museum can safely take care of them in perpetuity for the
25 British Government and where we are assured they will have

1 access at all times to the public.

2 The group I mentioned is deeply concerned by what
3 has happened to the Titanic since my discovery. Speaking
4 from myself, I naively thought the site would be treated
5 like the USS ARIZONA in Pearl Harbor. I served 30 years in
6 the Navy. And the debris field surrounding the bows and the
7 stern of the Titanic would be treated like the battlefield
8 of Gettysburg where my family fought on both sides.

9 Sadly, that did not happen. Even worse,
10 highlighted in the bankruptcy court, now taking place in
11 Jacksonville, is the intent of the RMS Titanic to break up
12 the historical collection, although I'm very encouraged by
13 what I heard now. My fear is, as well as the other
14 organizations I just spoke of, is that the artifacts could
15 potentially disappear from public view, be damaged or lost
16 to the world at large.

17 Finally, I have a question of the Court. RMS
18 Titanic, Inc., the present salvor-in-possession of the
19 wreck, has not returned to the site for more than seven
20 years, as required, as I understand it. For that reason, I
21 question why it continues to be the salvor-in-possession.
22 Perhaps the time has come for the Court to consider naming
23 another entity, a non-profit entity with the technology that
24 is needed to make regular trips to the Titanic, to continue
25 our long-term study of its condition and to better determine

1 how best to preserve and conserve this history site.

2 I request the Court consider the 1,503 souls who
3 perished that cold night in April of 1912 and give them the
4 honor and respect they so deserve. Thank you so much for
5 letting me speak.

6 THE COURT: Mr. Ballard, I would respond with two
7 statements: Number one, the advantage of my position is
8 that I get to ask questions, as the attorneys know, but I'm
9 not under any obligation to answer them. However, the
10 second thing that I would tell you, and you may want to, or
11 whoever is interested, consult salvage attorneys, under the
12 salvage laws of how a person or entity is declared a
13 salvor-in-possession. They have to do and take certain
14 actions to maintain that position, and if they don't
15 maintain it, once they're a salvor does not mean they are a
16 salvor in perpetuity. They are only a salvor if they take
17 certain steps, and that does not preclude a Court from later
18 declaring that they have lost their position. I'm not
19 talking specifically about R.M.S.T. at this time. I'm
20 talking generalities of salvage law.

21 A Court can, under salvage law, declare that a
22 salvor-in-possession has waived that right or given up that
23 right or forfeited that right and that there is a new
24 salvor. So it's not an in-perpetuity decision, but there is
25 no case or controversy, again, before the Court about

1 another entity seeking to do salvage at this juncture of the
2 Titanic wreck site.

3 MR. BALLARD: Could another entity do so?

4 THE COURT: Not without some Court permission.
5 They just can't do that.

6 MR. BALLARD: They could come to the Court and ask?

7 THE COURT: You can check on that, but, yes, anyone
8 can come to the Court and seek to be a salvor following the
9 tenets of the law.

10 MR. BALLARD: Thank you.

11 THE COURT: R.M.S.T. is not in perpetuity but they
12 are at the moment the salvor-in-possession.

13 MR. BALLARD: Thank you.

14 THE COURT: All right.

15 MR. BALLARD: I also wanted you to be aware that
16 the group is very interested in working with the courts to
17 acquire the entire collection.

18 THE COURT: Thank you, Mr. Ballard.

19 MR. BALLARD: Thank you.

20 THE COURT: Mr. Porter, is there anything?

21 MR. PORTER: No, Your Honor.

22 THE COURT: Anything else, Mr. McFarland?

23 MR. McFARLAND: No, Your Honor, not on behalf of
24 R.M.S.T. We appreciate the opportunity to be back before
25 the Court.

1 THE COURT: All right. Mr. Wainger, Mr. McFarland
2 and Mr. Porter, I just need to give you a personal update
3 for scheduling matters that doesn't have anything to do with
4 the substance. If you can come up to the podium.

5 (Side-bar conference.)

6 THE COURT: Mr. Porter, the only thing I mentioned,
7 I have a scheduling conflict in July. The parties had
8 wanted me to visit the Mariner's Museum, and I had agreed to
9 do that, but I explained my scheduling conflict to the
10 attorneys, in particular Mr. Porter, and that I would be
11 available in the fall, and he can explain it.

12 MR. PORTER: Be happy to accommodate Your Honor.

13 THE COURT: I'll be up and running.

14 All right. The Court stands in recess until
15 tomorrow morning.

16 (Hearing adjourned at 3:38 p.m.)

17 CERTIFICATION

18
19 I certify that the foregoing is a correct transcript
20 from the record of proceedings in the above-entitled matter.
21

22
23 X _____/s/ _____x

24 Jody A. Stewart

25 X _____6-28-2017 _____x

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